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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/713,619	11/15/2000	Rebecca S. Busch	MBA-P-00-001	3814
23446	7590	04/05/2006	EXAMINER	
MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661			BLECK, CAROLYN M	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 09/713,619	<b>Applicant(s)</b> BUSCH, REBECCA S.	
	<b>Examiner</b> Carolyn M. Bleck	<b>Art Unit</b> 3626	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: \_\_\_\_\_.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

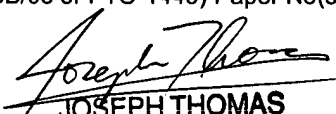
8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

SEE ATTACHED

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

  
 JOSEPH THOMAS  
 SUPERVISORY PATENT EXAMINER

Continuation of 11. The request for reconsideration has been considered but does not place the application in condition for allowance because:

Applicant arguments are found to be non-persuasive for the following reasons:

A. Applicant states he/she is confused because claims 11 and 12 (and their dependent claims) were found to be useful, concrete, and tangible in a previous Office Action (July 29, 2005). The Examiner notes that Ex parte Lundgren was decided on September 28, 2005. This was after the July 29, 2005 Office Action. Since the Lundgren decision, the USPTO has issued Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility. The Examiner was simply following these new Guidelines in analyzing Applicant's claimed invention.

Applicant argues that the claimed components of claim 11 are all interrelated to produce the very tangible and useful result of testing an audit chart in a pilot area and storing and mining errors from the testing of the audit chart as part of an overall audit of a business. The Examiner respectfully submits that claim 11 does not recite any system component that stores and mines errors from the testing of the audit chart. Further, Applicant argues that the system produces a test audit of a pilot area and mineable errors, which is a tangible and useful result. Claim 11 does not appear to produce a test audit. The Examiner fails to see where the tangible result of claim 11 is a test audit.

Similar analysis is applied to claim 12. A flowchart is not produced by any system component, thus this is not a useful or tangible result. Applicant also argues that the physical transformation test is no longer used under the analysis of 35 USC 101. The Examiner points out that the Interim Guidelines include in Annex 1, page 30, that the analysis of statutory subject matter includes: 1. Whether the claimed invention is a practical application by physical transformation or 2. Whether the claimed invention is a practical application that produces a useful, tangible, and concrete result.

B. Applicant argues that the features of claims 4 and 11 are not taught by the applied prior art. The Examiner respectfully submits that "conducting a general audit of a business" recited in claim 4, has no strict definition within the specification. Thus, the Examiner has given this limitation the broadest reasonable interpretation. Loan auditing as taught in Acosta is certainly associated with a business and can be considered a general audit of the business. Applicant argues that Acosta does not teach a specification code. However, Applicant does not define explicitly what a specification code is and thus, the Examiner has given this specification code the broadest reasonable interpretation.

As per claim 12, Applicant argues that there is no motivation to combine Acosta with Dart. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Examiner respectfully submits that Applicant has provided a motivation directly from the references themselves.

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